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To: <AirportEIR@LongBeach.gov>  
cc:  
Subject: DEIR Comments

01/30/2006 04:54 PM

**Douglas P. Haubert**<?xml:namespace prefix = o ns =  
"urn:schemas-microsoft-com:office:office" />

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**Snowden Avenue  
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January 30, 2006

Angela Reynolds  
City of Long Beach  
Planning and Building Department  
333 W. Ocean Boulevard  
Long Beach, CA 90802

RE: Airport Expansion DEIR

Dear Ms. Reynolds:

That you for the opportunity to comment on the DEIR for Long Beach Airport Expansion project. This letter contains my comments on this project from my own personal perspective.

The environmental impact report (EIR) is the heart of the California Environmental Quality Act (CEQA). Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, an EIR is not only a vehicle to protect the environment, but also to inform the City Council and Long Beach residents about the impacts of the project. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4<sup>th</sup> 1112.)

I think it can safely be said that Long Beach residents, as a whole, will support improvements and enlargement of the Airport *provided such action does not jeopardize*

*the existing noise ordinance or cost taxpayers money.* Some parts of the project will have no impact on the noise ordinance (such as replacing diesel equipment with clean air ground vehicles) because there is not increase in capacity. However, the City needs to look very closely to the parts of the project that will increase capacity. The DEIR does not adequately do this.

1 cont.

The DEIR states that there is no “causal relationship” between the proposed expansion and flight operations:

“[B]oth the full utilization of all 25 commuter flights and the potential increase of up to 11 commercial flights over current operational levels at the Airport are not causally related to the project proposed facilities improvements.”

However, it appears there is a public record disputing such a finding. During several of the scoping meetings, the argument was made over and over again that the current size of the Airport is insufficient to accommodate the number allowed under the noise ordinance. Articles in the Press-Telegram newspaper, including one article January 4, 2006, report that at least one commuter airline, Smooth Flight Holdings, Inc., has tied terminal expansion to the number of flights.

The DEIR falsely suggests one can argue expansion is absolutely necessary to accommodate the permitted flight activity, then turn around and say there is no relationship between the expansion and flight activity.<sup>[1]</sup> A more honest approach would be to admit that there is a relationship between the size of the terminals, the number of gates and the number of aircraft parking positions, and the capacity for flights and passengers in the future. There may be a minor relationship between size and capacity, but by ignoring this relationship altogether, you are not giving the Council accurate information.

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In fact, other than the stated assumption that there is no causal relationship between terminal expansion and the number of flights or passengers at LGB, there is no real support for this concept. The Noise Ordinance, *assuming* it is not invalidated, repealed or compromised at a later date, will effectively limit the number of flights at LGB. However, it is just as likely that the current number of flights at LGB (41 commercial flights and 4 commuter flights) represents the existing, reasonable baseline capacity and that the proposed expansion of the Airport terminal and, more importantly, the number of gates and aircraft parking positions, will cause an increase to some greater level of activity.

It is widely accepted that the capacity of an airport is best measured by the number of aircraft and passengers based on the airport’s gates and aircraft parking positions. However, there is no expert analysis in the DEIR of the total true capacity based on

aircraft gates and parking positions.

The DEIR assumes that the current number of gates (8) and the current number of aircraft parking positions (10) is insufficient to meet the number of flights permitted under the Noise Ordinance. There is no analysis, however, supporting this conclusion.

Perhaps 10 parking positions is the most appropriate for the number of flights permitted under law. The DEIR only looks at increasing the number of gates to 11 and the number of parking positions to 12-14. The DEIR fails to analyze any alternatives other than this limited range. This deprives the Council and the public of information it needs to make an informed decision based on true capacity.

The DEIR also does not adequately study the growth inducing impacts of the proposed expansion. As noted above, there is a superficial analysis given in the DEIR that suggests the Noise Ordinance will always limit the number of flights. However, there are many variables that could affect the Noise Ordinance.

For example, the Noise Ordinance could be repealed by the City Council or by act of initiative. The Noise Ordinance, which derives its authority by federal legislation (Airport Noise Capacity Act), could be affected by future federal legislative action that eliminates or limits the grandfather status of Long Beach's Noise Ordinance.

Also, since the Noise Ordinance is a local statute, implemented by the Airport Manager, it is possible that administrative interpretation of the Noise Ordinance could become more relaxed over time. For example, there is currently a dispute over the interpretation of the City's nighttime curfew occurring between 10:00 and 11:00 p.m.. Since the Airport Manager is the one to determine the number of flights (over 41 air carrier and 35 commuter), there are administrative variables that affect the number of flights.

The Noise Ordinance could also be subject to invalidation by a court of law. In fact, Jetblue's Associate General Counsel Robert Land once remarked his belief that a successful challenge could be based on violation of the Commerce Clause of the U.S. Constitution. In previous litigation, the Long Beach noise ordinance was invalidated by a federal judge.

While the City may not be required to forecast which laws will be changed in the future when studying the environmental effects of this Airport Expansion project, in this case it is necessary since changes are reasonably foreseeable unless, as discussed below, additional measures are adopted to protect the noise ordinance. An EIR must consider all "reasonably foreseeable" direct and indirect consequences of a project. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4<sup>th</sup> 1173.) Furthermore, CEQA must be interpreted "to afford the fullest possible protection to the environment within the

2 cont.

reasonable scope of the statutory language.” ([\*Friends of Mammoth v. Board of Supervisors\* \(1972\) 8 Cal. 3d 247, 259.](#))

In this case, I believe the City has two options. The City can study the true and accurate “growth inducing impacts” of this project, which includes a full analysis of the total number of flights and passengers. This will require a new DEIR that looks at the impacts of noise, pollution, and traffic impacts. Or alternatively, the City could take steps to ensure it is not “reasonably foreseeable” that the Noise Ordinance will be invalidated, repealed or compromised at a later date. Such safeguards may include agreements not to sue executed by airlines, a litigation defense fund, assurances from FAA that it will join Long Beach in protecting the noise ordinance, and other strategic devices.

2 cont.

Moreover, the DEIR includes an analysis of future flight activity, which anticipates in the short term an addition of 9 to 11 more air carrier flights as newer, quieter airplanes are introduced into the fleet mix using LGB. However, the project is expected to be a long-term project. Therefore, the City should look at the trends in the area of making aircraft quieter and project over the long term how many flights could be accommodated at LGB. In other words, if aircraft manufacturers have reduced noise by 20% each decade, we can expect the CNEL level to be reduced to half of its current level in 50 years. How many flights would be permitted under the noise ordinance then?

3

Finally, as to how the DEIR addresses noise impacts, the document is especially inadequate. The DEIR suggests the solution to noise impacts is to offer sound insulation only to property owners who execute avigation easements. As a matter of public policy, I cannot believe the City Council would agree to coercive tactics instead of creating a voluntary program available to property owners whether or not they execute an avigation easement.

4

In addition, a much wider contour than “65 CNEL” should be utilized as there are many homeowners negatively affected by noise who are outside what the consultant concludes is the 65 CNEL contour. Perhaps the unique nature of Southern California, where many people enjoy the space outside their homes, contributes to the fact that a 65 CNEL contour is simply insufficient.

5

I also disagree with the “razor” thin lines drawn to show the 60 and 65 CNEL contours. Some lines show a home’s “living room” within the 65 CNEL level and the “kitchen” outside this area. It is misleading to suggest that noise contours follow such precision, especially when there is deviation in the approach and departure paths of the airlines. This is especially illustrated in the DEIR which finds a “special education” building to be within the 60 CNEL contour, but Bixby Elementary School outside the 60 CNEL contour. ***The special education building is located on Bixby Elementary property.*** To

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suggest that noise will not affect both schools in the same manner is simply a charade and does not give the Council fair information on which to make decisions.

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Although I am a member of the City's Airport Advisory Commission, absolutely nothing in this letter should be interpreted as stating the position of the AAC. The AAC has not formally issued any position since the DEIR was released and it is up to each member to state his or her person views, which I am doing here.

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Sincerely,

Doug Haubert

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[1] Another way to say it is, you cannot have your cake and eat it too. I'm told this saying dates back to the 1500's, but was put as a question: "Can you eat your cake and then still have it left whole?" If you've already eaten it, you no longer have any left, and hence you cannot have it both ways.

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**COMMENTER 292 DOUGLAS P. HAUBERT**  
**Dated: January 30, 2006**

**Response 1**

Your comments are noted and have been forwarded to the decision makers as part of the Final EIR submittal.

**Response 2**

The utilization of the 25 commuter flights is currently permitted by the City's Airport Noise Compatibility Ordinance (Long Beach Municipal Code Chapter 16.43, "Commuter Carriers shall be permitted to operate not less than twenty-five flights per day, the number of Flights operated on November 5, 1990", See LBMC Sec. 14.43.060 D1) Such commuter flight levels are permitted whether or not proposed terminal improvements are constructed. Further, under the Optimized Flight Scenario discussed in the DEIR, there is a potential for an additional number (over minimum 41 daily flight) of Air Carrier flights provided that the existing air carriers operate within existing noise budgets. Although no additional air carrier flights have been added since the adoption of the Airport Noise Compatibility Ordinance in 1995, such a possibility theoretically exists should the carriers either fly quieter aircraft or fly within exiting established curfews (or both). The potential for adding such additional air carrier flights exists under the Ordinance whether or not any terminal improvements are made. The above is the rationale for stating that there is no causal relationship between the proposed improvements and the number of flights emanating from the Airport.

Even with existing flight levels at the Airport (which currently includes the minimum 41 air carrier flights and only 4 commuter flights out of a permitted minimum of 25 daily flights), the Airport and the parking areas have experienced overcrowding during peak hours. Further, as discussed in the DEIR, the existing TSA security areas, baggage claim areas, passenger holdroom areas, passenger gates, and airplane parking areas experience overcrowding during peak times. This condition will only become exacerbated when additional permitted commuter flights are added. Terminal improvements are currently needed to relieve such existing conditions. The project does not propose any changes to the existing regulatory Ordinance and none has been proposed by the City Council. In fact, it has been oft stated that the Council and the community is desirous of protecting the existing Ordinance, and there has been no suggestion that the Ordinance will be repealed or modified in any significant way. Therefore, the construction of the project will not lead to any flights beyond those already permitted by existing regulations.

The capacity of the Long Beach Airport for air carrier and commuter flights is measured by its existing Airport Noise Compatibility Ordinance which sets parameters on the number of flights to and from the Airport. The need for additional passenger gates and additional aircraft parking areas as discussed in the DEIR is to accommodate the existing passenger and air carrier loads at the Airport. Additional aircraft parking spaces will relieve existing congestion and will permit aircraft to more quickly board and unload passengers, and importantly will reduce the idling time of Aircraft, which idling contributes to existing air and noise pollution. Additional aircraft parking areas will likewise allow the aircraft to connect to proposed electrical outlets which will further reduce air and noise pollution. The EIR does cover a reasonable range of alternatives in regard to the number of proposed aircraft parking positions and passenger gates in that the DEIR discusses a range from the "no project" (i.e., no change) alternative to scenarios ranging from 12 to 14 parking positions and an increase in the number of gates to 11. Further, the DEIR has complied with CEQA in regard to studying a reasonable range of "project" alternatives given that the number of gates and the number of parking positions are simply features of the overall project designs.

It is not reasonable to suggest that the existing Airport Noise Compatibility Ordinance will be repealed by the City Council or invalidated by a court of law. As previously stated, the City Council has made clear its desire to retain the existing Ordinance intact. The Ordinance (as explained in the DEIR) was the product of approximately 11 years of litigation in the Federal Courts. The Ordinance has not been challenged in the State or Federal Courts since its adoption and there is no presently pending litigation regarding its viability. Furthermore, the Airport Noise and Capacity Act (ANCA) of 1990 specifically exempts the City from its application in regard to the basic provisions of the Ordinance. There has been no indication from the FAA or Congress of any effort to amend or repeal ANCA so as to affect Long Beach's existing ordinance. In short, it is not reasonably foreseeable to suggest that there will be a change to the existing regulatory framework regarding the Airport's Noise Compatibility Ordinance.

In addition, please see Topical Responses 3.1.1 and 3.1.3.

### **Response 3**

The assumptions used to identify potential future optimized flights are described on page 3.6-13 of the Draft EIR. For each airline operating at the airport the assumption was made that the airline would operate the quietest aircraft in its fleet or has on order. The commenter suggests that the EIR look 50 years into the future and estimate noise levels and operations at that point in time. Such an estimate is not feasible or reasonable. First, the dominant airline at Long Beach is Jet Blue and their aircraft fleet is nearly brand new. Airliners have shown to have a very long life span. There are airliners flying today that were built in the early 1970's. The commenter is correct that aircraft manufacturers are producing quieter aircraft. It is also likely that they will continue to produce ever quieter aircraft. But there is no basis to assume that airliners will get 20% quieter each decade for the next 50 years. The newest aircraft designs are emphasizing noise control, emissions reductions and fuel economy. It is not clear that noise control will remain a dominant design factor in light of the current emphasis on fuel economy and emissions reduction. Any analysis out to the 50 year mark would be speculative at best and most likely just simply wrong. The question of how many additional flights could be accommodated if the CNEL were reduced to half its current level can be answered. Reducing the CNEL by half would allow twice the number of air carrier operations to occur.

### **Response 4**

The final characteristics of the sound insulation program will be developed within 24 months of the certification of the EIR (MM 3.6-2). The Draft EIR recommends that the City obtain an aviation easement. The terms of that easement have not been determined and will be part of the program development. Ultimately, the terms of any aviation easement or even the requirement for the easement will be determined by the City Council.

### **Response 5**

The 65 CNEL contour is used as a criterion contour consistent with the State of California Airport Noise Regulations, the City of Long Beach Airport Noise Ordinance, and FAA Noise/Land Use Guidelines. It is also important to note that under current FAA policy, federal funding for sound insulation would only be available for homes within the 65 CNEL contour.

### **Response 6**

Each noise contour is drawn as a line according to current state of the art practices and is the most common way of depicting lines of equal loudness. The Draft EIR makes no attempt to slice

homes as suggested in the comment. When counting the number of homes in the contours, a home was counted as in the contour if any part of the parcel touched or was within the contour. City of Long Beach parcel maps were used to make this assessment. In terms of the sound insulation program for the schools, the extent to which specific buildings touched by or within the contour or the entire school is insulated will be addressed during the development of the sound insulation program. It is common in sound insulation programs, and permitted for FAA funding, to 'round off' the contours to existing geographic features when determining which homes and buildings to insulate. It is important to recognize that the sound insulation program was developed to mitigate existing or future noise impacts that may occur with or without the project. These impacts are existing or may occur whether or not this project proceeds.

#### **Response 7**

Your comments are noted and have been forwarded to the decision makers as part of the Final EIR submittal.